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July 27, 2006

Elizabeth O'Donnell  
Kentucky Public Service Commission  
211 Sower Boulevard  
P.O. Box 615  
Frankfort, Kentucky 40601

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COMMISSION

**RE: Case No. 2006-00339**

Dear Ms. O'Donnell:

Enclosed please find an original and ten copies of Global Crossing Telecommunications, Inc.'s Motion to Dismiss in the above referenced case.

Please indicate receipt of this filing by your office by placing your file stamp on the extra copy and returning to me via the enclosed, self-addressed stamped envelope.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BRANDENBURG TELECOM LLC )  
 )  
COMPLAINANT )  
 ) CASE NO. 2006-00339  
v. )  
 )  
GLOBAL CROSSING TELECOMMUNICATIONS, INC. )  
 )  
DEFENDANT )

MOTION TO DISMISS

Global Crossing Telecommunications, Inc. (“Global Crossing”), by its undersigned counsel, hereby moves the Commission to dismiss Brandenburg Telecom LLC’s (“Brandenburg”) complaint, for the reasons set forth below.

I. Chapter 278 Does Not Provide for Complaints Against a Utility’s Customer

1. Brandenburg’s complaint is styled as an action under KRS 278.260. In reality, it is an action to collect money for services Brandenburg alleges it has provided under its access tariffs. To put it simply, Brandenburg is asking the Commission to become its collection agent. However, neither KRS 278.260 nor any other section of Chapter 278 gives the Commission jurisdiction to adjudicate a complaint by a utility *against a customer*, as the Commission has properly held. *In the Matter of the Tariffs of Kentucky Power Co.*, 2000 Ky. PUC LEXIS 1337 (2000), *infra*. Instead, KRS 278.260 gives the Commission authority to investigate and remedy customer “complaints as to rates or service of any *utility*.” See Complaint, ¶ 5 (emphasis added). But Brandenburg offers no complaint about Global Crossing’s rates or service. Global Crossing is not providing service to Brandenburg.

2. The Commission does not have a basis to hear a complaint by a utility against its customer. In Case No. 2000-062, a case involving a customer billing dispute over tariffed charges, the Commission denied an electric utility's request that it force a customer to pay amounts allegedly due under tariff, finding: "[n]o provision of KRS Chapter 278 extends the Commission's jurisdiction to a customer of a utility or otherwise empowers the Commission to direct a customer to take, or refrain from taking, any action." *Kentucky Power*, 2000 Ky. PUC LEXIS 1337 (2000).

## II. An Interstate Access Tariff Dispute Exists

3. Brandenburg claims it has invoiced Global Crossing for services and facilities under "applicable tariff(s)" but fails to disclose that the amounts allegedly due relate primarily to interstate, and therefore non-jurisdictional, access services and only secondarily to intrastate services provided under a state tariff. In fact, there exists a billing dispute between the parties relating to the correct PIU factor applicable to Global Crossing's traffic. Even if the Commission had jurisdiction to order utility customers to pay bills, there would be no basis for the Commission to require Global Crossing to remit payment for interstate access charges.

4. In similar disputes involve billing for interstate service, the FCC has determined that it "does not act as a collection agent for carriers with respect to unpaid tariffed charges. . ." *U.S. Telepacific Corp. v. Tel-America of Salt Lake City*, 19 FCC Rcd. 24552 (2004). No one can reasonably dispute that the FCC has no authority under the Communications Act to conduct adjudications of carrier's rights against their customers. *See Id.*, n. 26. Brandenburg is simply shopping for a forum since it could not possibly file this complaint with the FCC.

Wherefore, Global Crossing respectfully requests that the Commission dismiss this complaint and grant all other relief to which Global Crossing may be entitled.

Respectfully submitted,



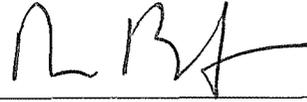
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*COUNSEL FOR GLOBAL CROSSING TELECOMMUNICATIONS, INC.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served all parties in this case this 27<sup>th</sup> day of July, 2006.



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Douglas F. Brent

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